

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|----------------------------------|---|----------------------------------|
| Melissa Smith Boyter, |) | C/A No. 0:09-2828-HFF-PJG |
| |) | |
| Plaintiff, |) | |
| |) | |
| Michael J. Astrue, |) | REPORT AND RECOMMENDATION |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This social security action is before this court pursuant to 42 U.S.C § 405(g) for review of a “final decision” of the Commissioner of the Social Security Administration (“Commissioner”). The plaintiff, Melissa Smith Boyter, initiated this action and filed her Complaint on October 29, 2009. (Docket Entry 1.) The Commissioner filed an Answer along with a transcript of record on March 8, 2010. (Docket Entry 6.)


The Local Rules of this District state that, after the filing of an answer, a plaintiff has thirty (30) days in which to file a written brief. Local Civil Rule 83.VII.04 DSC. The plaintiff’s brief was due on or before April 12, 2010. As of this date, the plaintiff has not filed a brief and has presented no argument as to why the decision by the Commissioner is not supported by substantial evidence.

Originally, the plaintiff was represented in this matter by J. Redmond Coyle, Esquire. Upon Mr. Coyle’s death, Robert Scott Dover, Esquire was appointed by the South Carolina Supreme Court to assume responsibility for Mr. Coyle’s client files. In the Matter of J. Redmond Coyle, Order (S. Ct. Feb. 4, 2010). Based on information provided via telephone and e-mail by Dover to the Clerk of Court’s office, Boyter has retrieved her case file from Dover. However, no new attorney has entered an appearance and no plaintiff’s brief has been filed.

On May 6, 2010, the court issued an order giving the plaintiff until June 4, 2010 to file a brief, either *pro se* or through counsel, if she desired to proceed in litigating her claims. (Docket Entry 9.) The plaintiff was specifically warned that if she failed to respond, this action would be recommended for dismissal with prejudice for failure to prosecute. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b). Despite this warning, the plaintiff still did not respond. Therefore, the plaintiff meets all of the criteria for dismissal under Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982).

RECOMMENDATION

Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution. See Davis, 588 F.2d at 70; Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989) (stating that magistrate judge's prior explicit warning that a recommendation of dismissal would result from the plaintiff failing to obey his order was proper grounds for the district court to dismiss the suit when the plaintiff did not comply despite the warning), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990); Fed. R. Civ. P. 41(b).



Paige J. Gossett

UNITED STATES MAGISTRATE JUDGE

June 23, 2010
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).